IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 279 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVITABEN M. VYAS - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR HRIDAY BUCH for Applicant(s) : 1 - 2.
Mr.Archana Raval,A.P.P. for Respondent(s) : 1,
MR SAMIR B BUNDELA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 11/07/2007

ORAL JUDGMENT

1. Rule. Learned A.P.P. Mr.Archana Raval waives service of rule on behalf of the respondent no.1-State while Mr.Harin Raval for Mr.Samir Bundela waives service on behalf of the respondent no.2.

2. This Criminal Revision Application filed under Section 397 read with section 401 of the Code of Criminal Procedure has been preferred by the applicants nos.1 and 2 -original accused challenging the judgment and order dated 12th January 2007 passed by the learned Judicial Magistrate, First Class , Junagadh in Criminal Case no.108 of 2006 as also the judgment and order dated 25th May, 2007 passed by the learned Additional Sessions Judge & Fast Track Court Judge, Junagadh, in Criminal Appeal no.8 of 2007 confirming the same. By the impugned judgment dated 12-1-2007, the learned Magistrate has convicted the accused under Section 138 of the Negotiable Instruments Act and the accused no.1 was sentenced to suffer S.I for one year and fine of Rs.5000/-while the accused no.2 was only imposed sentence of fine of Rs.5000/-.

3. Briefly stated, the facts leading to the filing of the present Revision Application are that the respondent no.2 lodged a complaint under Section 138 of the Negotiable Instruments Act in the Court of the learned Judicial Magistrate, Junagadh which was registered as Criminal Case no.108 of 2006. The respondent no.2 in the said complaint alleged that the applicants had issued a cheque no.073520 dated 4th November, 2005 drawn on Bank of Baroda, Junagadh, for an amount of Rs.1,00,000/- towards settlement of debt to the complainant which on presentation to the bank was dishonoured and returned with the endorsement

"insufficient funds". It is further alleged in the complaint that despite service of notice dated 9th November, 2005 to the applicants, the applicants have neither replied to notice nor paid up the amount of debt. The learned Magistrate issued process but the applicants did not plead guilty, and hence trial commenced. The complainant has produced documentary evidence to prove his case as also examined himself. The further statement of the applicants-accused as required under Section 313 of the Criminal Procedure Code was also recorded wherein they denied the evidence of the prosecution and disputed the writings on the cheque in question. After hearing the learned Counsel for both the parties and taking into consideration the materials placed before him, the learned Judicial Magistrate, First Class, at the end of the trial, passed the judgment and order dated 12-1-2007 in Criminal Case no.108 of 2006 which was confirmed in appeal by the learned Additional Sessions Judge and Fast Track Court Judge, Junagadh, vide judgment and order dated 25th May, 2007 in Criminal Appeal no.8 of 2007, giving rise to the present Criminal Revision Application.

4. Heard learned Counsel Mr. Hriday Buch for the applicants nos.1 and 2, Ms. Archna Raval, learned A.P.P . for the respondent no.1-State, and Mr. Harin Raval for Mr. Samir Bundela for the respondent no.2.

5. Now, in the instant case, pursuant to the order dated 13-6-

2007, the applicant no.1-accused has been released on bail by imposing certain conditions as the applicant no.1-accused has deposited the entire amount of consideration of Rs.1,00,000/- before the Registry of this Court. It is not in dispute that the said amount of Rs.1,00,000/- has been withdrawn by the respondent no.2-original complainant.

6. Mr. Hriday Buch, learned Counsel for the applicants nos.1 and 2 has submitted that he presses this application only on the point of sentence and sought reduction in the sentence awarded to the applicant no.1 to the extent that the sentence undergone be treated as the sentence awarded. However, he does not press this application qua the applicant no.2.

7. Mr. Harin Raval learned Counsel appearing for Mr. Samir Bundela for the respondent no.2 has seriously objected to allowing the reduction in sentence. According to the learned Counsel the disputed cheque is dated 4th November, 2005 and now in July, 2007 the applicant no.1 has deposited the amount of consideration with a view to escape the sentence of jail. The learned Counsel further submitted that taking into consideration the object of the legislature no leniency should be shown to the applicants merely because the amount of consideration has been deposited before the Court. The learned Counsel also submitted that the learned Judge has not awarded compensation under Section 357 of the Criminal

Procedure Code and therefore also the learned Judge has committed error in passing the impugned order. Finally, it is urged that this Court Revision should not interference in the concurrent findings recorded by the two Courts below which are quite legal and proper.

8. At the outset, the argument advanced by learned Counsel Mr. Raval that the learned Judge has failed to award compensation as required under Section 357 of the Criminal Procedure Code does not merit acceptance asthe respondent has not challenged the same by filing Revision.

9. This Court cannot lose sight of the fact that the applicant no.1 has already deposited the entire amount of compensation of Rs.1,00,000/- before the Registry of this Court which amount has already been withdrawn by the respondent no.2. Apart from that the applicant no.1-accused who is a lady had remained in jail for 22 days and as stated above, she had also paid up the entire amount of consideration. That being the position, in the opinion of this Court, the ends of justice will be served if the period for which the applicant no.1-accused has remained in jail i.e. the period which she had already undergone be treated as the period of sentence awarded. Order accordingly. Reference in this connection if need be may be had to the decision rendered by the Apex Court in the case of Narsingh Das Tapadiav. Goverdhan Das Partani and

Another reported in ((2000) 7 SCC 183.

10. In the result, this Criminal Revision Application is partly allowed qua the applicant no.1-accused. The amount of Rs.1,00,000/- deposited by the applicant-accused and withdrawn by the respondent be treated as compensation under Section 357 of the Criminal Procedure Code. Rule is made absolute in the aforesaid terms. The Revision qua the applicant no.2-accused stands disposed of as not pressed.

(M.D.Shah,J.)

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